

MONO POWER COMPANY

IBLA 77-11 Decided December 27, 1976

Appeal from the decision of the Utah State Office, Bureau of Land Management, denying reinstatement of terminated oil and gas lease U-28971.

Affirmed.

1. Oil and Gas Lease: Reinstatement—Oil and Gas Lease: Rentals

An oil and gas lease, terminated by operation of law for failure to pay timely the advance rental, will not be reinstated where the sole reason offered as justification for the tardy payment is the confusion and business disruption which attended the remodeling of the corporate lessee's office space. Employee neglect or inadvertence likewise will not serve as justification.

APPEARANCES: Kingsley B. Hines, Esq., Southern California Edison Company, for the appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Mono Power Company held oil and gas lease U-28971 covering certain lands in T. 29 S., R. 19 E., SLM, Utah. The annual advance rental due August 2, 1976, was not received in the Utah State Office of the Bureau of Land Management until August 13, 1976. The lease therefore terminated automatically by operation of law, as provided by section 1(7) of the Act of July 9, 1954, 30 U.S.C. § 188(b) (1970). Mono Power Company then petitioned for reinstatement of the lease in accordance with the amendatory Act of May 12, 1970, 30 U.S.C. § 188(c), alleging that the failure to pay the rental when due was not due to lack of reasonable diligence on its part, and was justified. The petition for reinstatement was denied by the decision of the Utah

State Office on September 14, 1976, from which action Mono Power Company has brought this appeal.

[1] In its statement of reasons for appeal Mono Power Company offers the following explanation of its failure to remit the rental on or before the due date:

STATEMENT OF FACTS

Mono Power Company's Check No. 210, drawn on Crocker National Bank, in the correct amount of \$1,040.00, payable to the Bureau of Land Management on account of annual rental payment for said lease was prepared and dated June 1, 1976, two months prior to the anniversary date of said lease. Said check was prepared in Denver, Colorado, by a contract data processing firm, for us, and forwarded to us by mail for execution and handling. Such checks are regularly received at least two months in advance of anniversary dates to allow time for execution by an authorized officer of the corporation, appropriate accounting procedures and timely mailing.

On or about the time of arrival, at Mono, of said check together with others with a later anniversary date, Mono was initiating a complete physical remodeling of office space.

"Business-as-usual" was attempted during the tearing out and reconstruction of office walls, re-wiring of telephone and electric service outlets, the temporary relocation and piecemeal permanent relocation of personnel and records. The operation required the packing of files, records and desk contents into sealed boxes for eventual re-distribution within the new offices. During this time our employee responsible for lease record maintenance temporarily lost control of said check.

The fact and timing of the office reconstruction was beyond the control of said employee. The disruption of routine and system was beyond the control of our employee. The re-scheduling of the move of said employee's office and records was beyond the control of said employee. The temporary loss of control of said check was unknowable to Mono Management until said employee re-located it on August 9 and reported the fact.

This account does not demonstrate either reasonable diligence or justification. The envelope containing the check was postmarked

August 11, nine days after it was due in the Bureau's Salt Lake City office.

As pointed out in the decision below, this Board has held repeatedly that a lessee may not rely upon the bulk and/or complexity of its business organization so as to make "justifiable" an action which would not be held to be justifiable for an individual lessee. Monturah Co., 10 IBLA 347 (1973); Columbia Gas Transmission Corp., 13 IBLA 280 (1976); Serio Exploration Co., 25 IBLA 106 (1976); Constitution Petroleum Co., Inc., 25 IBLA 319 (1976). 1/

Likewise, the negligent or inadvertent failure of the lessee's agent or employee to submit the rental properly and timely has consistently been held not to justify the lessee's failure to meet this requirement. Knight and Miller Oil Corp., 14 IBLA 135 (1974); G. Wesley Ault, 16 IBLA 291 (1974); Charles C. Sturdevant, 20 IBLA 280 (1975); Samuel J. Testagrossa, 25 IBLA 64 (1976); Constitution Petroleum Co., Inc., *supra*.

Here it is alleged that the lessee's own activities operated to place the check beyond the "control" of its own employee who was responsible for it, and that employee "re-located" it after it was past due. Thus, either the lessee corporation or its employee must be at fault, and the failure to make timely payment cannot thus be justified in either instance.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Frederick Fishman
Administrative Judge

1/ Judicial review pending.

